

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

September 7, 2006

The Honorable Mark B. McClellan, M.D., PhD.  
Administrator  
Centers for Medicare and Medicaid Services  
200 Independence Avenue, S.W., #314-G  
Washington, D.C. 20201

Dear Dr. McClellan:

We are greatly concerned about a number of issues that have come to our attention regarding the implementation of the Medicare prescription drug benefit: (1) Medicare beneficiaries being served by drug plans that do not meet either State or Federal licensure requirements; (2) preemption of States' ability to hold insurance plans accountable for the bad conduct of agents who are selling their policies; and (3) insurance agents using abusive marketing practices.

Without immediate attention to these matters, seniors and individuals with disabilities are at risk of being defrauded or losing their drug plan. Federal tax dollars are also at risk. It is fiscally imprudent and irresponsible to allow plans to participate in the Medicare program without meeting State or Federal requirements and being subject to minimal, if any, oversight. We know that you share our concern that consumers must be protected from these dangers and appreciate your attention to the questions attached to this letter.

**Operating without Federal or State Licensure**

The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) and the final rule implementing this Act allow the Centers for Medicare and Medicaid Services (CMS) to grant waivers of State licensure requirements for prescription drug plan (PDP) sponsors for a period of up to 36 months. This means that a prescription drug plan would not have to meet the laws of the State in which it operated regarding such items as solvency requirements during this period. In order to be eligible for a waiver, plans must demonstrate, however, that they have "submitted a fully completed application for licensure to the State" (70 *Fed. Reg.* 4551, sec. 423.410(d)).

We are concerned, however, that CMS has granted waivers to plan sponsors who had not submitted full, completed applications and were not licensed in any State or who had licensure applications returned by a State because the application was incomplete. In addition, we would expect that CMS would revoke any waivers allowing prescription drug plans to operate if their

The Honorable Mark B. McClellan, M.D., PhD.

Page 2

State application has been denied. Unless CMS improves its oversight of plans and plan sponsors, private insurance companies will be selling prescription drug coverage to a particularly vulnerable segment of the population without the oversight and due diligence necessary to protect consumers. We ask that you please respond to the attached questions.

### **State Oversight of Insurance Producers**

CMS recently took the position that State laws protecting beneficiaries against bad conduct by unscrupulous insurance agents may be preempted where these State laws would “impede” the sale of Part D plans. In particular, CMS has taken the position that State consumer protections that require insurance agents to be affiliated with the insurance plans for whom they sell policies, called “appointment,” can no longer be enforced by the State. CMS’s position essentially makes it impossible for States to hold plans accountable for the bad or inappropriate actions of someone selling insurance coverage on their behalf.

While we understand that CMS has been working with the National Association of Insurance Commissioners to find ways to refer cases of alleged agent misconduct to the State authorities responsible for regulating agents selling Medicare Part D plans, these efforts will be greatly hindered by CMS’s usurpation of State consumer protections. In order to better understand what CMS intends to do in these cases, please respond to the attached questions.

### **High-Pressure Sales to Elderly and Disabled Beneficiaries**

We are also concerned that CMS is allowing insurance agents to sell insurance products or policies unrelated to Medicare prescription drug coverage when they visit a beneficiary under the guise of selling a Medicare Part D plan. Currently, some States prohibit insurance agents who call on prospective buyers for one purpose, from trying to sell them an unrelated product (i.e., cross-selling). For example, under some State laws, an insurance agent is typically not allowed to call on a senior to sell Part D coverage, but arrive at the home and also try to sell annuities, life insurance, or other products.

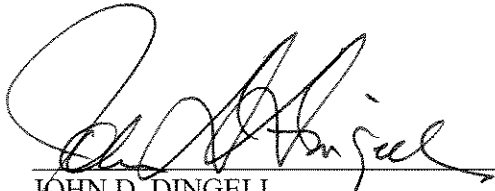
As you are no doubt aware, there are anecdotal reports that some agents have engaged in high-pressure sales tactics to sell seniors unsuitable insurance products unrelated to their Medicare coverage. We are concerned that the ability of agents to cross-sell non-Medicare products when selling Part D plans is an invitation to abuse. We would appreciate more information on the extent to which this is happening and what CMS is doing to address this problem. Questions in this regard are outlined in the attached document.

We believe that you share our concerns that consumers must be protected from financially unstable Medicare drug plans and that CMS regulations should not provide insurance agents new avenues to take advantage of seniors and individuals with disabilities. We appreciate

The Honorable Mark B. McClellan, M.D., PhD.  
Page 3

your prompt attention to these matters, and ask for a response by Tuesday, September 26, 2006,  
before the end of your tenure at CMS.

Sincerely,



JOHN D. DINGELL  
RANKING MEMBER  
COMMITTEE ON ENERGY AND COMMERCE



HENRY A. WAXMAN  
RANKING MEMBER  
COMMITTEE ON GOVERNMENT REFORM



CHARLES B. RANGEL  
RANKING MEMBER  
COMMITTEE ON WAYS AND MEANS



SHERROD BROWN  
RANKING MEMBER  
SUBCOMMITTEE ON HEALTH  
COMMITTEE ON ENERGY AND COMMERCE



PETE STARK  
RANKING MEMBER  
SUBCOMMITTEE ON HEALTH  
COMMITTEE ON WAYS AND MEANS

Attachment

cc: The Honorable Joe Barton, Chairman  
Committee on Energy and Commerce

The Honorable Tom Davis, Chairman  
Committee on Government Reform

The Honorable William M. Thomas, Chairman  
Committee on Ways and Means

The Honorable Nathan Deal, Chairman  
Subcommittee on Health, Committee on Energy and Commerce

**Questions for the Honorable Mark B. McClellan, M.D., PhD.  
Administrator, Centers for Medicare and Medicaid Services**

**Operating without Federal or State Licensure**

1. For both 2006 and 2007, please provide:
  - (a) the number of Medicare Part D plans serving beneficiaries that were not licensed in any State;
  - (b) the number of Medicare Part D plans that were granted waivers of State licensure; and
  - (c) of such plans, the number that had either not submitted a fully completed application or their applications were rejected or returned by a State for being incomplete or unsuitable for licensure.
2. What steps is CMS taking to ensure that waivers are granted only to PDP sponsors who have submitted fully complete applications for State licensure, as required by the Medicare Part D final rule?
3. Does CMS have a process in place to revoke a waiver allowing a prescription drug plan to operate if it later determines that the plan's application had been denied by the State? To date, has CMS revoked or refused any waivers for plans that failed to meet State requirements?
4. What criteria is CMS applying to ensure unscrupulous prescription drug plans are not permitted to sell products without going through full State licensure review?

**State Oversight of Insurance Producers**

5. What is CMS doing to ensure that all complaints, whether made to a regional office, central office, Medicare hot line, prescription drug plan, or other office, get referred to the appropriate place for action? How many cases have been referred to this point? What criteria will CMS apply to determine whether a case will be referred, or will all such cases automatically be referred?
6. As a result of a decision by CMS to preempt consumer protections, how many insurance agents are selling Medicare policies in violation of the laws of their State? How many State enforcement cases against bad-acting insurance agents or plans have been stopped as a result of this CMS policy that preempts a State's ability to protect consumers?

7. If State protections relating to appointment no longer apply, how will States be able to hold insurance companies accountable for bad-acting agents that sell their policies? Will CMS take any action against Part D plans that are repeatedly found to have agents using abusive, fraudulent, or otherwise improper tactics when selling a particular plan's insurance coverage to seniors and individuals with disabilities?
8. Which other State consumer protection laws does CMS view as being preempted relating to Medicare prescription drug plans?

**High-Pressure Sales to Elderly and Disabled Beneficiaries**

9. Is CMS tracking the number of agents who are cross-selling non-Medicare products, such as annuities to seniors when meeting with them for the purposes of selling a Medicare drug plan?
10. Given that State oversight and enforcement of consumer protections has been weakened by CMS rules on Part D, what oversight, if any, has CMS done to protect Medicare beneficiaries from high-pressure and inappropriate marketing activities?
11. What is CMS's position on the ability of agents to conduct point-of-contact sales in pharmacies and other places of business? Allowing these types of sales may create the impression among seniors that these plans are sponsored or endorsed by the businesses in which they solicit seniors to enroll. Furthermore, these arrangements may result in seniors being inappropriately steered into PDPs that are unsuitable for them and do not meet their prescription drug needs.